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SUGHRUE MION, PLLC
2100 Pennsylvania Avenue, N.W.
Washington, DC 20037-3213

EXAMINER

GELIN, JEAN ALLAND

ART UNIT	PAPER NUMBER
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/036,356
Filing Date: January 07, 2002
Appellant(s): AGIN ET AL.

MAILED

MAR 22 2005

Technology Center 2600

John H. Mion
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on December 28, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the

decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 17-27, 29, 31, 32, 34, 37, 41, and 43-50 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6,405,052

Faber

06/11/2002

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 17-21, 23-27, 29, 31, 32, 34, 37, 41, and 43-50 are rejected under 35 U.S.C. 102(b). This rejection is set forth in a prior Office Action, mailed on 4/28/2004.

Claim 22 is rejected under 35 U.S.C. 103. This rejection is set forth in a prior Office Action, mailed on 4/28/2004.

(11) Response to Argument

The Examiner will address the issues raised by the appellant.

In order for one of ordinary skill in the art to capture the essence of the invention as broadly and vaguely claimed, a great deal of explanation should be provided to the ordinary skilled artisan, as the appellant has attempted to do in the present appeal brief, for it is clear that the claims are not self sufficient. The Examiner kindly points out that claims 17-21, 23-27, 29, 31, 32, 34, 37, 41, and 43-50 as broadly written, are anticipated by Tiedemann Jr. et al. and in compliance with the requirements of 35 U.S.C. 102(b); claim 22 is rendered obvious in light of the teachings of Tiedemann Jr. et al. in view of Faber, and in compliance with the requirements of 35 U.S.C. 103.

Applicant first argues that Tiedemann fails to teach performing a step of changing the transmit power according to a corresponding change in the required transmission quality target value. The Appellant further argues that "transmitting at lower or higher due to the condition of the propagation path" does not mean "changing the transmit

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power according to a corresponding change in the required transmission quality target value” as recite in claim 17.

The Examiner disagrees with the Applicant's argument. Tiedemann teaches changing power in accordance with the quality of the signal corresponding to a change in signal quality, power can increase or decrease. When the signal quality in the propagation path deteriorates due to the fading conditions, the system detects the change and responds to the change in order to maintain or improve the quality of the signal in the propagation path. It is to be noted that a change in power requires a change in energy value, as disclosed in col. 8, lines 39-67). Clearly, changing power in accordance to a change in transmission quality is readable on Tiedemann's disclosure.

The Appellant further argues that the teaching of Tiedemann “how to decrease the transmit power after having increased it by an amount which is more than adequate” is not the same as “changing the transmit power according to a corresponding change in the required transmission quality target value”.

However, the Examiner maintains that the claimed system and the system of Tiedemann change the transmit power based on the quality of the signal transmission. Tiedemann teaches upon detecting new fading condition present in the propagation path, a request is made to modify power. Therefore, the claimed invention is readable on Tiedemann's disclosure.

The Appellant further argues that Tiedemann does not disclose which particular value of change should be applied. However, the Examiner does not see in claim 17 a

specific target value that is unique to the claimed invention. Therefore, the claim is broad enough to read on Tiedemann's disclosure.

With respect to claim 22, the Appellant argues that the rejection of the dependent claim stating "Tiedemann teaches all limitations except the transmission quality is represented by a signal to interference ratio" is an error. However, the Examiner disagrees with the preceding argument; the rejection is not an error. To meet the deficiency of Tiedemann, a secondary reference has been brought to reject claim 22 under 35 USC 103.

In response to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. In re Nomiya, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. In re McLaughlin, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In re Bozek, 163 USPQ 545 (CCPA 1969). In this case, the Appellant further argues Tiedemann cannot be combined with Faber because it would not be produced the subject matter of claim 22 or subject matter which would have rendered claim 22 obvious. In another word, the combination of Tiedemann and Faber is improper. However, the Examiner would like to draw Appellant's attention to the fact that Faber is

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cited solely to teach the transmission quality is associated with SIR wherein the transmission quality is based on the level of SIR. Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to implement the technique of Faber within the system of Tiedemann in order to avoid transmission power overshoot and increased interference at the beginning of the call acquisition between the mobile station and the base station due to the introduction of closed loop power control method. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

JEAN GELIN
PRIMARY EXAMINER

JGelin

March 18, 2005

Jean Allard Gelin

Conferees

SPE: Emmanuel Moise

Emmanuel Moise

SUGHRUE MION, PLLC

2100 Pennsylvania Avenue, N.W.

Washington, DC 20037-3213

SPE: Marsh Banks-Harold

Marsha D Banks-Harold

MARSHA D. BANKS-HAROLD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600